IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

THURSDAY, THE 18TH JANUARY 2007 / 28TH PAUSHA 1928

OP.No. 4635 of 2002(B)

PETITIONER:

KUMARI ASHOKAN, AGED 32 YEARS,
W/O. LATE ASHOKAN, MOOLEKUZHIYIL,
VELOOR, KARIMUGAL, PUTHENCRUZ. P.O.

BY ADV. SRI.A.X.VARGHESE

RESPONDENTS:

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1. STATE OF KERALA, REP. BY CHIEF SECRETARY
SECRETARIAT, THIRUVANANTHAPURAM.

2. DIRECTOR GENERAL OF POLICE,
THIRUVANANTHAPURAM.

3. SUB INSPECTOR OF POLICE,
AMBALAMEDU POLICE STATION.

4. DIRECTOR, CENTRAL BUREAU
INVESTIGATION, THIRUVANANTHAPURAM.

BY ADV. SRI.K.P.SATHEESAN, SC FOR CBI
GOVERNMENT PLEADER, SRI NOBLE MATHEW FOR R1 TO R3
SRI.S.SREEKUMAR, SC FOR CBI

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 15/01/2007, THE COURT ON 18/01/2007 DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXTS:-

EXT.P1	PHOTOCOPY OF THE POSTMORTEM REPORT DATED 09/08/2001
EXT.P2	PHOTOCOPY OF THE NEWS ITEM PUBLISHED IN DESHABIMANI DAILY DATED 10/08/2001
EXT.P3	PHOTOCOPY OF THE NEWS ITEM PUBLISHED IN MALAYALA MANORAMA DAILY DATED 08/08/2001
EXT.P4	TRUE COPY OF THE REPRESENTATION PREFERRED BEFORE THE CHIEF MINISTER DATED 09/08/2001
EXT.P5	PHOTOCOPY OF THE REPRESENTATION PREFERRED BY THE OPPOSITION LEADER V.S.ACHUTHANANDAN BEFORE THE CHIEF MINISTER DATED 06/09/2001.

\\TRUE COPY //

S.SIRI JAGAN, J.

O.P No.4635 OF 2002

Dated this the 18th day of January, 2007

JUDGMENT

Petitioner is the widow of one Sri.Asokan stated to be a a tempo driver. According to the petitioner, her husband Asokan died on account of torture in police custody on 7.8.2001. The allegation is that the police had arrested the said Asokan for alleged possession of stolen goods in his tempo van and in the torture by the police, pursuant to the same, he died in the General Hospital, Ernakulam. The petitioner, therefore, seeks the following reliefs.

i) Issue a Writ of Mandamus directing the 1st respondent to entrust the investigation into the murder of petitioner's husband Asokan to C.B.I.

ii) Issue a Writ of Mandamus directing the 1st respondent to award an amount of Rs.5,00,000/- to the petitioner as compensation by way of public law remedy.

iii) Such other reliefs that this Hon'ble Court deems fit and proper.

2. Regarding the first relief, the 3rd respondent has filed counter affidavit, in which, the allegation of torture has been

specifically denied. It is stated therein that the said Asokan was arrested from Brahmapuram Diesel Power Plant since he was caught by the security staff of Brahmapuram Diesel Power Plant and the local people in the act of committing theft of scrap materials from the premises of the power plant. When he was brought to the police station he showed symptoms of Epilepsy and he was taken to the Thripunithura Taluk Hospital, from where, he was referred to General Hospital, Ernakulam. He was discharged from the hospital in the morning of 7.8.2001 and after discharge, while he was being brought to Karimukal at the request of the Escort Police in a hired taxi jeep, when the jeep reached Vadavucode Farmers Co-operative Bank he jumped from the jeep and sustained head injuries and he succumbed to the said injuries. In view of the complaint raised by the petitioner, the matter was enquired into by the Crime Branch, in which also the version of the local police was found to be true.

3. In view of the said categorical version by the respondent, I do not think that there is sufficient material on record to come to a conclusion that this matter is to be investigated by the CBI. Further, the petitioner has sufficient remedies available under the Criminal

Procedure Code for filing a private complaint, if he is not satisfied with the investigation conducted by the police. As such, I am not inclined to grant the first prayer .

4. Regarding the 2nd prayer, compensation can be awarded only on a finding of negligence or deliberate torture by the police, for which evidence has to be taken by the appropriate forum. That being so, I am afraid that the claim for such a relief cannot be entertained in proceedings under Article 226 of the Constitution of India.

5. In the above circumstances, I do not find any merit in the writ petition and the same is dismissed.

(S.SIRI JAGAN, JUDGE)

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